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October 21, 2010

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk – MC105
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 OCT 22 AM 11:03
CHIEF CLERKS OFFICE

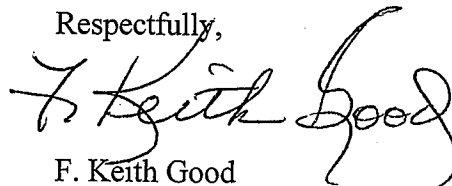
Re: Response of North Plains Groundwater District to the Petition for Inquiry
Filed by Mesa Water, Inc. with the Texas Commission on Environmental
Quality

Dear Ms. Castañuela:

Enclosed is the original Response of North Plains Groundwater Conservation District to the Petition for Inquiry filed by Mesa Water, Inc. with the Texas Commission on Environmental Quality and a copy of the first page of said Response. Please file the original Response and return the file-endorsed first page of the Response to me in the envelope provided.

If you have any questions, please contact the undersigned.

Respectfully,



F. Keith Good
FOR THE FIRM

TEO/mmi
Enclosures
All parties on Certificate of Service

Z:/FKG Clients/NPGCD/Ltr Castañuela

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Request for Inquiry Filed by 2010 OCT 22 AM 11:03

Mesa Water, L. P.

CHIEF CLERKS OFFICE

Before the

Texas Commission on
Environmental Quality

**Response of North Plains Groundwater Conservation District
to the Petition For Inquiry Filed by Mesa Water, Inc. with the
Texas Commission on Environmental Quality**

North Plains Groundwater Conservation District ("North Plains") hereby submits its response to the Mesa Water, L.P. ("Mesa") Petition for Inquiry filed under Texas Water Code, Section 36.108(f) and Texas Administrative Code, Section 293.23 with the Texas Commission on Environmental Quality ("TECQ") on September 17, 2010.

GMA-1 Achieved Adequate Planning.

Mesa asserts that there was not "adequate planning" by GMA-1. In response, North Plains contends that GMA-1 did perform adequate planning in the process of setting its desired future conditions (DFCs). In 2009, Mesa's filed a petition jointly with G&J Ranch, Inc. under Texas Water Code 36.108(l) with the Texas Water Development Board (TWDB) appealing approval of the GMA-1 DFCs set by GMA-1. Mesa, et al basically presented the same argument to the TWDB that it is presenting to the TCEQ in this Request for Inquiry. As part of the DFC appeal process, the TWDB was required to hold at least one hearing at a central location in GMA-1 to take testimony on the petition of Mesa, et al. (Texas Water Code, Section 36.108(m)). The hearing was held in Amarillo, Texas in the conference room of the Panhandle Regional Planning Commission on November 11, 2009. The attached transcript of the TWDB hearing in Amarillo provides sworn testimony on the DFC planning process pursued by the four groundwater

conservation districts comprising GMA-1. (See pages 64 through 119 of the hearing transcript which is attached as Exhibit "A" and incorporated herein by reference.) Based on this recorded evidence, there is no question that the GMA-1 districts "adequately planned" for the DFCs ultimately set by GMA-1.

GMA-1 DFCs Are Reasonable.

Mesa asserts that the DFCs set by GMA-1 are not reasonable. North Plains contends that the reasonableness of the DFCs set by GMA-1 has already been determined by the TWDB. This determination was made after Mesa filed its petition referred to above with the TWDB. Following the November 11, 2009 hearing in Amarillo, the evidence presented at the hearing and the entire record assembled by the TWDB, was analyzed by the TWDB staff and a report (Report) to the TWDB was prepared. The TWDB staff Report recommended: *"...that the Board not find that the desired future conditions for the Ogallala and Rita Blanca Aquifers adopted by GMA-1 are unreasonable."* (See page 9 of the February 10, 2010 TWDB staff Report prepared by Bill Hutchinson, Director of Groundwater Resources, and Joe Reynolds, Staff Attorney, attached as Exhibit "B"; the entire Report is incorporated herein by reference). After receiving the Report at a Special Meeting on February 17, 2010, the TWDB determined that the DFCs of GMA-1 are not unreasonable and entered its ruling accordingly. (See TWDB Board Minutes of the Special Meeting on February 17, 2010 attached as Exhibit "C" and incorporated herein by reference.)

Time is Not Ripe to Modify Management Plans and Rules to Achieve DFCs.

Mesa alleges that the respective Groundwater Conservation Districts of GMA-1 have failed to develop management plans and/or rules to implement the DFCs established by GMA-1. North Plains submits that this allegation by Mesa is premature. Time is not ripe for the GMA-1 GCDs to make changes to their management plans or their rules. Policy decisions (management plans) and rule making are not “quick-fix” procedures which are readily implemented. These procedures require careful thought, stakeholder input, economic impact studies and determinations that, based on the best information available, a groundwater conservation district’s management plan and rules will, indeed, conserve and protect the aquifer or aquifers, and will achieve the established DFCs.

DFC Process Not Finalized.

Further, the GMA-1 DFC process has not been completed. This process, at the least, is a two-step process. The GMA must first select a DFC which the TWDB must utilize to establish the managed available groundwater (MAG). At this point in time, the TWDB has not provided the GMA-1 Districts with the final MAG. The final MAG calculation is necessary for the GMA-1 GCDs to set policy in a management plan and to develop rules to achieve the DFCs. Also, the DFC for the Dockum Aquifer was set by GMA-1 on June 3, 2010. The protest period remains open until June 3, 2011. In this regard, the protest period for the Ogallala Aquifer DFCs only recently expired on July 9, 2010.

Pending Litigation.

In addition, there is litigation pending which directly impacts the policy-making process for the GCDs of GMA-1, as well as groundwater conservation districts throughout the State. A case in point is presently pending before the Texas Supreme Court. (*Edwards Aquifer Authority and the State of Texas vs. Burrell Day and Joel McDaniel*, Tex. Sup. Ct., No. 08-0964) It is quite probable that the outcome of this case will influence the regulation of groundwater throughout the State. Also, specifically in regard to the GMA-1 groundwater conservation districts, Mesa has filed suit in the 201st Judicial District Court of Travis County against the TWDB and is challenging its decision in regard to the reasonableness of the GMA-1 DFCs. The outcome of this litigation may impact management plans and the rulemaking processes of GMA-1 groundwater conservation districts. At best, the foregoing litigation creates uncertainties regarding regulation of groundwater throughout Texas, generally, (*EAA v. Day*) and throughout GMA-1, specifically, (*Mesa v. TWDB*).

North Plains Has Adopted A Management Plan And Rules To Preserve And Conserve Groundwater.

North Plains has a TWDB approved Management Plan in effect. The North Plain's Rules provide for well spacing, production limits (with annual reporting requirements) and numerous other groundwater conservation and preservation measures. Meters are required on all wells drilled after October 14, 2003. (See Exhibit "D" Management Plan for North Plains and Exhibit "E" Rules for North Plains, both of which

are incorporated herein by reference.) North Plains does enforce its Rules. Civil penalties have been assessed to violators in the following total amounts: 2007-2008 \$10,000.00; 2008-2009 \$42,995.75; and 2009-2010 \$54,050.00. These civil penalties were assessed for various violations including: failure to meter; failure to report annual production; and for production exceeding the annual production cap. Also violators were required to place meters wells that previously used alternative metering methods. In 2010, North Plains has cited well owners as follows: Failure to Report 2009 Production – 4 violators; Failure to Timely Report 2009 Production – 56 violators; Overproduction of Allowable Acre Feet – 26 violators; Drilling a New Well Without a District Approved Permit – 1 violator; Water Waste Issues – 2 violators. The North Plains Rules are clearly directed toward regulating the production of groundwater in the District which will ultimately be a key factor in achieving the GMA-1 DFCs.

Affidavit of Steven D. Walthour.

In further support of this Response, North Plains attaches as Exhibit “F” the Affidavit of Steven D. Walthour which is incorporated herein by reference.

Conclusion.

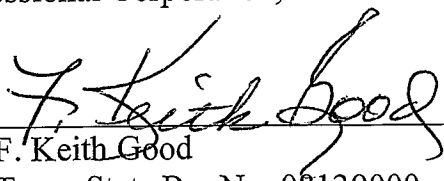
North Plains respectfully requests that the TCEQ dismiss Mesa’s Petition for Inquiry.

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Respectfully submitted,

LEMON, SHEARER, PHILLIPS & GOOD, PC,
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By:


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**ATTORNEYS FOR NORTH PLAINS
GROUNDWATER CONSERVATION
DISTRICT**

CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that on this 21st day of October, 2010 a true and correct copy of the above Response of North Plains Groundwater Conservation District to the Petition For Inquiry Filed by Mesa Water, Inc. with the Texas Commission on Environmental Quality and was filed with the TCEQ Chief Clerk, and sent by first class mail and/or facsimile to the following persons:

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Executive Director, TCEQ

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Office of Public Interest Counsel

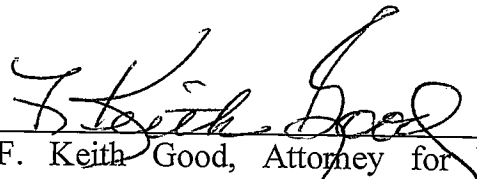
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F. Keith Good, Attorney for North Plains
Groundwater Conservation District